

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
May 2, 2013

In the Matter of J. N. HARDAWAY, Minor.

No. 313041
Wayne Circuit Court
Family Division
LC No. 04-426745-NA

Before: BORRELLO, P.J., and K. F. KELLY and GLEICHER, JJ.

PER CURIAM.

Respondent, the mother of the involved minor child (JH), appeals as of right a circuit court order terminating her parental rights to the child pursuant to MCL 712A.19b(3)(c)(i), (g), (i), (j), and (l). For the reasons set forth in this opinion, we affirm.

I. FACTS

Respondent's parental rights to three other children were terminated in 2006. The child protective proceedings relating to JH commenced in May 2008, when the Department of Human Services (DHS) filed a petition seeking termination of respondent's parental rights based on respondent's prior terminations. The trial court took temporary custody of the child and ordered respondent to participate in various services. Respondent successfully completed her treatment plan and the court returned the child to her custody and dismissed jurisdiction in January 2009.

Approximately one year later, in January 2010, DHS filed a petition seeking permanent custody of the child after receiving a complaint that respondent left the child in the care of relatives for a period of approximately seven months. During a bench trial on the petition, the referee cut the proceeding short and announced his intention to terminate respondent's parental rights. Respondent appealed, and this Court reversed on due process grounds and remanded to the trial court.¹

On remand, this case was assigned to a new judge, who issued a treatment plan for respondent on March 31, 2011. Under the plan, respondent was required to maintain a legal

¹ *In re J N Hardaway*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2011 (Docket No. 298255).

source of income, secure safe and suitable housing, obtain substance abuse assessment and if necessary, treatment, submit to random drug screens, attend counseling, and take parenting classes. Throughout the following months, the trial court held several dispositional review hearings to assess respondent's compliance with the treatment plan. By March 9, 2012, when respondent was not in complete compliance with her treatment plan, the court directed DHS to file for permanent custody.

On March 23, 2012, Sue Lepola, JH's case manager, filed a supplemental petition seeking termination of respondent's parental rights. The supplemental petition alleged that respondent failed to meet the requirement for court-ordered weekly random drug screens and failed to secure a legal source of income and suitable housing. The petition also alleged that respondent continued to have a relationship with Jason Cross, JH's putative father, failed to keep in contact with Lepola, did not appear to have benefitted from individual therapy, and was not prepared to care for her daughter.

The circuit court held a termination hearing on the supplemental petition on July 23, July 31, September 18 and October 3, 2012. At the hearing, Lepola testified that DHS placed JH with her maternal aunt in January 2010, where she remained at the time of the hearing. With respect to respondent's March 2011 treatment plan, Lepola testified that respondent eventually completed parenting classes, individual therapy, and substance abuse therapy as required. She was partially compliant in completing required drug screens and her visits with JH were appropriate. Initially, the visits were at the home of respondent's grandmother; however, at the September 18, 2012, hearing date Lepola testified that DHS moved the visits from the grandmother's home to the agency because the grandmother suspected that respondent stole money from her. Once DHS moved the visits, respondent missed several scheduled visits with JH and did not contact Lepola regarding the missed visits.

Lepola conducted several site visits to respondent's residence on Greenview Street in Detroit. Lepola explained that respondent rented the home for \$400 per month and was fixing it up. Initially, the home was just a "shell," but by the end of the hearing respondent had made substantial improvements to the home. However, the home did not have a working furnace and had a \$1,161.53 arrearage with the electrical company and there was a shutoff notice on the property. Lepola testified that DHS would not place JH in a home that did not have a furnace.

Lepola testified that one of her main concerns about reuniting JH with respondent was respondent's continuing relationship with Cross. Lepola testified that she had concerns about Cross because DHS did not know who he was. Although Cross informed Lepola that he wanted to establish paternity, he failed to provide any identification, he used several aliases, and he once denied that he was "Jason Cross." Lepola testified that DHS could not confirm Cross' criminal history because the agency did not know his identity. Furthermore, Lepola learned that Cross was involved in a drive-by shooting where an unidentified gunman shot and killed the occupant of his vehicle. Lepola testified that she informed respondent that DHS would not place JH in her care if she remained in a relationship with Cross. Lepola testified that she observed Cross at respondent's residence on several occasions. Lepola recommended termination, stating, "I'm concerned that she doesn't, you know, a lot of the things just don't add up for me, with the housing, and her income, and with Mr. Cross being in the picture."

The grandmother testified that respondent lived with her on and off for the past two years, and at the time of the hearing, respondent continued to spend some nights at the grandmother's home. Respondent visited with JH at the grandmother's residence and she treated the child appropriately. Respondent helped with laundry and helped prepare food. The grandmother testified that Cross had "a lot" of aliases and was always at respondent's residence when she drove respondent there. She further testified that Cross called her home "non-stopped" when respondent was present. The grandmother had "no doubt" that Cross and respondent lived together and stated that respondent was not going to leave Cross. She testified that Cross previously threatened to physically harm the aunt and that she recently saw him hit someone in the face.

The grandmother further testified that JH was bonded with the aunt and the aunt's husband and daughter. According to the grandmother, respondent did not have a place to care for JH, never went to work, and she had no source of income other than student loans. The grandmother represented that she had secured a job for respondent at Value World, but respondent did not show up for the interview.

Respondent testified that she and JH were bonded, that she loved the child and that JH called her "mommy." Respondent testified that she went to her grandmother's house to visit JH and her other children where she did homework, laundry and cooked for the children; she cared for the children when they were sick. Respondent testified that she stopped using drugs and benefited from parenting classes and individual therapy. She indicated that she would be able to care for JH and explained that she approached things differently then when she had her first child. Respondent testified that she had made many improvements to her home, but she agreed that the home did not have an operable furnace. Respondent testified that she could have the furnace installed within a month and that she was making payments on the home's arrearage with the electric company.

Respondent testified that she attended a community college and used some of her student loan money for living expenses. In addition, respondent stated that she earned income at a local repair shop and as a hairstylist where she earned about \$50 to \$100 per week. On the last day of trial, Fred Doug Wells testified that respondent worked part time for him at a local repair shop on average 6 to 10 hours per week earning \$8.50 per hour. Wells testified that he paid respondent cash "under-the-table." Respondent denied taking money from her grandmother's bank account.

Respondent offered conflicting testimony about her relationship with Cross. At first, respondent testified that she did not have a relationship with Cross. However, she then admitted to having a "friendship," but stated that the relationship was not sexual. She stated that she had not realized that she was not to have any type of relationship with Cross.

At the conclusion of the hearing, the circuit court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g), (i), (j), and (l). The court concluded that respondent "is still unable to provide adequately for her child," and found that respondent "maintained regular contact" with Cross despite having been cautioned not to do so. The court reasoned that respondent's continued contact with Cross was "extremely problematic because she was told to sever her ties with him in order to be reunified with her child." The court also reasoned that respondent did not have suitable housing because her home did not have a furnace and that there

was no evidence to show respondent could maintain her home and support JH. Finally, the court found that respondent “did not have a legal source of income” where she only earned money “under the table.” The court concluded that there was clear and convincing evidence to terminate respondent’s parental rights. The court then concluded that it was in JH’s best interests to terminate respondent’s parental rights. The court reasoned that respondent had not raised JH for over four years and that JH had spent nearly her entire life with the aunt. The trial court entered a written order on October 4, 2012.² This appeal ensued.

II. ANALYSIS

On appeal, respondent argues that the trial court erred in terminating her parental rights where there was no clear and convincing evidence to support the termination. “We review for clear error a trial court’s factual findings as well as its ultimate determination that a statutory ground for termination of parental rights has been proved by clear and convincing evidence.” *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake has been made. *Id.*

Under MCL 712A.19b(3), “the petitioner for the termination of parental rights bears the burden of proving at least one ground for termination.” *In re Trejo Minors*, 462 Mich 341, 350; 612 NW2d 407 (2000). MCL 712A.19b(3)(i) provides that a circuit court may terminate parental rights if the court finds by clear and convincing evidence that: “[p]arental rights to 1 or more siblings of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.”

In this case, at minimum, MCL 712A.19b(3)(i) was established by clear and convincing evidence. Respondent does not dispute that the court previously terminated her rights to three of her other children following the commencement of child protective proceedings. Furthermore, previous attempts to rehabilitate respondent were unsuccessful where the prior terminations occurred after respondent received court services and where respondent left JH in the care of relatives after having completed a treatment plan in 2009. On this record, the trial court did not clearly err in finding that there was clear and convincing evidence to support termination under MCL 712A.19b(3)(i). See *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012) (noting that only one statutory ground for termination of parental rights need be established).

In addition, there was clear and convincing evidence to support termination under MCL 712A.19b(3)(g). That subsection provides that a court may terminate parental rights if clear and convincing evidence shows that the parent, “without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.”

² In the written order, the trial court also terminated the parental rights of the “unknown/unidentifiable” father of JH under MCL 712A.19b(3)(a)(i).

In this case, respondent did not have suitable housing and she maintained a relationship with Cross, an individual that DHS did not know anything about, and who refused to cooperate with the agency. Respondent's testimony concerning her income differed from that of her employer who testified that she worked approximately 6 to 10 hours per week earning \$8.50 per hour. Thus, although the income was legal,³ it was neither sufficient nor reliable to maintain a home and provide for JH. Respondent presented no evidence to indicate that she would be able to acquire a reliable source of income within a reasonable time. Instead, the grandmother testified that respondent never went to work, failed to follow through on a job interview, did not actively seek employment, and stole money from the grandmother's bank account. Additionally, while respondent made progress toward ensuring safe and suitable housing, she failed to secure suitable housing by the end of the hearing where her home did not have a working furnace and had a significant arrearage with the electrical company. Moreover, although respondent complied with most of her treatment plan, she previously demonstrated an ability to comply with her treatment plans, only to regress back to the same level of neglect once the court reunified her with her children. In this case, the court gave respondent a clear ultimatum to fully comply with her treatment plan or face termination of her parental rights, yet respondent failed to do so. Therefore, the trial court did not clearly err in finding that respondent failed to provide proper care and custody for the child and there was no reasonable likelihood she would be able to do so within a reasonable time. MCL 712A.19b(3)(g).⁴

Respondent also argues that the trial court clearly erred in terminating her parental rights because the termination was not in the best interest of JH. We review for clear error a trial court's determination regarding the child's best interests. MCR 3.977(K); *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). A finding is clearly erroneous if, although there is evidence to support it, we are left with a definite and firm conviction that a mistake was made. *Id.*

Once the DHS establishes a statutory ground for termination of parental rights by clear and convincing evidence, the court must determine whether termination is in the child's best interests. MCL 712A.19b(5). Neither party has a particular burden to present evidence regarding the child's best interests; rather, the trial court should find from the whole record whether termination is in the child's best interests. *Trejo*, 462 Mich at 353. A trial court may consider a variety of factors in determining the child's best interests including the strength of the bond between the parent and child, the child's well-being while in care and the possibility of adoption, and the parent's involvement in questionable relationships. See *In re BZ*, 264 Mich App 286, 301; 690 NW2d 505 (2004); *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001). A

³ The trial court clearly erred in finding that respondent's income was "illegal" simply because her employer paid her in cash where neither petitioner nor the trial court cited any law to support the proposition that earning cash income is per se illegal and where respondent's status with the IRS was not at issue in this case.

⁴ Given our conclusion that the trial court did not clearly err in finding that there was evidence to support termination under at least two statutory grounds, we need not address the other grounds for termination cited by the trial court. See *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

trial court may also consider the child's need for permanency, which includes consideration of the child's age and particular needs, and the length of time a parent may need to correct a condition. *In re McIntyre*, 192 Mich App 47, 52-53; 480 NW2d 293 (1991).

In this case, evidence showed that JH spent nearly her entire life of 4-½ years with respondent's aunt and that she had bonded with the aunt and the aunt's family. In contrast, respondent had not cared for JH for any extended period, and when she previously obtained custody, she left the child with a relative. Furthermore, respondent did not fully participate in supervised visitation with JH after the visits were moved to the agency. Moreover, as discussed above, respondent did not have a reliable source of income and failed to secure suitable housing after having more than a year to do so. In particular, respondent admitted that her home did not have a working furnace, a necessary pre-requisite to placement of JH in the home. Respondent's claim that she would have the furnace installed was insufficient to show a reasonable likelihood that she would be able to provide proper care and custody for the child within a reasonable time. In *Trejo*, 462 Mich at 364, our Supreme Court stated:

The evidence that respondent may have acquired an apartment in October 1996 suitable for the children, during the pendency of the permanent custody hearing, does not clearly overwhelm the respondent's failure over the year the children had been in the court's temporary custody to obtain or maintain suitable housing. The court did not clearly err by refusing to further delay permanency for the children, given the uncertain potential for success and extended duration of respondent's reunification plan.

In this case, like in *Trejo*, the trial court did not clearly err in refusing to further delay permanency for JH given respondent's uncertain potential for success and the extended amount of time respondent had to obtain suitable housing. Here, JH was in the court's custody for over two years. Over the course of that time, respondent failed to secure suitable housing for JH. Furthermore, there was no guarantee that respondent would be able to secure suitable housing within a reasonable time where respondent failed to secure reliable income to pay for a furnace and pay off the arrearage with the electric company.

In addition, the record showed that respondent continued to be involved in a relationship with Cross, an individual that DHS did not know anything about. Cross refused to come forward and establish paternity, preventing DHS from learning Cross' identity and ensuring that it was appropriate to allow him to have contact with JH. Based on the testimony of multiple witnesses, respondent clearly knew that it was in her best interests, for reunification purposes, to end her relationship with Cross. She simply chose not to do so, and there was no reasonable likelihood of respondent ending her contact with Cross within a reasonable time. See *In re AH*, 245 Mich App at 89 (consideration of a parent's involvement in a questionable relationship is appropriate in determining a child's best interests).

In sum, the trial court did not clearly err in finding that termination of respondent's parental rights was in JH's best interests. MCL 712A.19b(5); *Trejo*, 462 Mich at 364.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kirsten Frank Kelly
/s/ Elizabeth L. Gleicher